

Craig Sanders (Cal Bar 284397)
csanders@sanderslaw.group
SANDERS LAW GROUP
333 Earle Ovington Blvd, Suite 402
Uniondale, NY 11553
Telephone: (516) 203-7600

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Robert Barbera,

Plaintiff,

v.

Short Story, Inc.,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Robert Barbera (“*Plaintiff*”), by and through his undersigned counsel, for his Complaint against defendant Short Story, Inc. (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §101 *et seq.*

2. Plaintiff created photographs of American singer-songwriter and actress Ariana Grande (the “*Photographs*”) in which Plaintiff owns the rights and licenses for various uses including online and print publications.

1 3. Defendant owns and operates a website at domain
2 blog.shortstorybox.com (the “*Website*”).

3 4. Defendant, without permission or authorization from Plaintiff, actively
4 copied and displayed the Photographs on the Website and engaged in this
5 misconduct knowingly and in violation of the United States copyright laws.

6 **PARTIES**

7 5. Plaintiff Robert Barbera is an individual who is a citizen of the State of
8 New York and resides in New York County, New York.

9 6. Upon information and belief, defendant Short Story, Inc. is a California
10 corporation with a principal place of business at 1401 21st Street, Suite R,
11 Sacramento in Sacramento County, California.

12 **JURISDICTION AND VENUE**

13 7. This Court has subject matter jurisdiction over the federal copyright
14 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

15 8. This Court has personal jurisdiction over Defendant because it
16 maintains its principal place of business in California.

17 9. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does
18 business in this Judicial District and/or because a substantial part of the events or
19 omissions giving rise to the claim occurred in this Judicial District.

20 **FACTS COMMON TO ALL CLAIMS**

21 **A. Plaintiff's Copyright Ownership**

22 10. Plaintiff is a professional photographer by trade who is the legal and
23 rightful owner of certain photographs which Plaintiff commercially licenses.

24 11. Plaintiff has invested significant time and money in building Plaintiff's
25 photograph portfolio.

26 12. Plaintiff has obtained active and valid copyright registrations from the
27 United States Copyright Office (the “*USCO*”) which cover many of Plaintiff's
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photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff owns protectable copyright interests.

14. On August 17, 2018, Plaintiff first published a photograph of Ariana Grande in a white sweatshirt ("*Photograph 1*"). A copy of Photograph 1 is attached hereto as Exhibit 1.

15. In creating Photograph 1, Plaintiff personally selected the subject matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used to capture the image and made each and every artistic determination necessary for the creation of the work.

16. On September 19, 2023, Photograph 1 was registered by the USCO under Registration No. VA 2-367-373.

17. On September 30, 2018, Plaintiff first published a photograph of Ariana Grande in a black sweatshirt ("*Photograph 2*"). A copy of Photograph 2 is attached hereto as Exhibit 1.

18. In creating Photograph 2, Plaintiff personally selected the subject matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used to capture the image and made each and every artistic determination necessary for the creation of the work.

19. On June 18, 2019, Photograph 2 was registered by the USCO under Registration No. VA 2-162-626.

20. Plaintiff created the Photographs with the intention of them being used commercially and for the purpose of display and/or public distribution.

B. Defendant's Infringing Activity

21. Defendant is the registered owner of the Website and is responsible for its content.

22. Defendant is the operator of the Website and is responsible for its

1 content.

2 23. The Website is a key component of Defendant's popular and lucrative
3 commercial enterprise.

4 24. Upon information and belief, Defendant has not implemented adequate
5 internal policies to verify copyright ownership before content use, indicating a gross
6 negligence in legal compliance, which is essential for a company with Defendant's
7 reach, capabilities, and level of sophistication.

8 25. Upon information and belief, Defendant's internal policies, if any, are
9 either not designed to verify copyright ownership before content use or are
10 systematically ignored, indicating a willful, recurring disregard for copyright
11 compliance.

12 26. Defendant's failure to adopt or effectively enforce internal copyright
13 policies, if any, indicates *de facto* willful infringements.

14 27. On or about February 28, 2021, Defendant displayed the Photographs
15 on the Website as part of an on-line story at URL:
16 [https://blog.shortstorybox.com/how-to-pull-off-the-oversized-trend-if-youre-](https://blog.shortstorybox.com/how-to-pull-off-the-oversized-trend-if-youre-petite/)
17 [petite/](https://blog.shortstorybox.com/how-to-pull-off-the-oversized-trend-if-youre-petite/). Copies of screengrabs of the Website including the Photographs are attached
18 hereto as Exhibit 2.

19 28. Without permission or authorization from Plaintiff, Defendant
20 volitionally copied and displayed Plaintiff's copyright protected Photographs on the
21 Website.

22 29. Plaintiff discovered the Infringements on July 23, 2023.

23 30. Upon information and belief, the Photographs were copied and
24 displayed by Defendant without license or permission, thereby infringing on
25 Plaintiff's copyrights in and to the Photographs (hereinafter the unauthorized uses
26 set forth above are referred to as the "*Infringements*").

27 31. The Infringements includes a URL ("*Uniform Resource Locator*") for
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1 a fixed tangible medium of expression that was sufficiently permanent or stable to
2 permit it to be communicated for a period of more than a transitory duration and
3 therefore constitutes a specific infringement.

4 32. The Infringements are exact copies of Plaintiff's original images that
5 were directly copied and displayed by Defendant on the Website.

6 33. Upon information and belief, Defendant takes an active and pervasive
7 role in the content posted on its Website, including, but not limited to copying,
8 posting, selecting, commenting on, and/or displaying images including but not
9 limited to Plaintiff's Photographs.

10 34. Upon information and belief, the Photographs were willfully and
11 volitionally posted to the Website by Defendant.

12 35. Upon information and belief, Defendant was aware of facts or
13 circumstances from which the determination regarding the Infringements were
14 apparent. Defendant cannot claim that it was not aware of the infringing activities,
15 including the specific Infringements which form the basis of this complaint, since
16 such a claim would amount to only willful blindness to the Infringements on the part
17 of Defendant.

18 36. Upon information and belief, Defendant engaged in the Infringements
19 knowingly and in violation of applicable United States copyright laws.

20 37. Upon information and belief, Defendant has the legal right and ability
21 to control and limit the infringing activities on its Website and exercised and/or had
22 the right and ability to exercise such right.

23 38. Upon information and belief, Defendant monitors the content on its
24 Website.

25 39. Upon information and belief, Defendant has received a financial benefit
26 directly attributable to the Infringements.

27 40. Upon information and belief, the Infringements increased traffic to the
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Website and, in turn, caused Defendant to realize an increase in its business revenue.

41. Upon information and belief, a large number of people have viewed the unlawful copies of the Photographs on the Website.

42. Upon information and belief, Defendant at all times had the ability to stop the reproduction and display of Plaintiff's copyrighted material.

43. Defendant's use of the Photographs harmed the actual market for the Photographs.

44. Defendant's use of the Photographs, if widespread, would harm Plaintiff's potential market for the Photographs.

45. On November 22, 2023, Plaintiff, via counsel, served a letter seeking to address the complaints contained herein concerning Defendant's infringements of Plaintiff's rights-protected work.

46. On April 4, 2024, Plaintiff, via counsel, served a second letter seeking to address the complaints contained herein concerning Defendant's infringements of Plaintiff's rights-protected work.

47. Despite Plaintiff's efforts and willingness to address Defendant's infringing activity Defendant failed to respond and Plaintiff was forced to seek judicial intervention for Defendant's infringing activity.

48. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST COUNT

(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)

49. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

50. The Photographs are original, creative works in which Plaintiff owns a valid copyright.

51. The Photographs are properly registered with the USCO and Plaintiff

1 has complied with all statutory formalities under the Copyright Act and under
2 regulations published by the USCO.

3 52. Plaintiff has not granted Defendant a license or the right to use the
4 Photographs in any manner, nor has Plaintiff assigned any of its exclusive rights in
5 the copyrights to Defendant.

6 53. Without permission or authorization from Plaintiff and in willful
7 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
8 illegally copied, reproduced, distributed, adapted, and/or publicly displayed works
9 copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its
10 copyrights.

11 54. Defendant's reproduction of the Photographs and display of the
12 Photographs constitutes willful copyright infringement.

13 55. Upon information and belief, Defendant willfully infringed upon
14 Plaintiff's copyrighted Photographs in violation of Title 17 of the U.S. Code, in that
15 Defendant used, published, communicated, posted, publicized, and otherwise held
16 out to the public for commercial benefit, Plaintiff's original and unique Photographs
17 without Plaintiff's consent or authority, by using them on the Website.

18 56. As a result of Defendant's violations of Title 17 of the U.S. Code,
19 Plaintiff is entitled to an award of actual damages and disgorgement of all of
20 Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504
21 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
22 statutory damages against Defendant for each infringement pursuant to 17 U.S.C. §
23 504(c).

24 57. As a result of the Defendant's violations of Title 17 of the U.S. Code,
25 the court in its discretion may allow the recovery of full costs as well as reasonable
26 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

27 58. As a result of Defendant's violations of Title 17 of the U.S. Code,
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1 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of
2 Plaintiff's copyright pursuant to 17 U.S.C. § 502.

3 **JURY DEMAND**

4 59. Plaintiff hereby demands a trial of this action by jury.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

7 That the Court enters a judgment finding that Defendant has infringed on
8 Plaintiff's rights to the Photographs in violation of 17 U.S.C. §501 *et seq.* and
9 therefore award damages and monetary relief as follows:

- 10 a. finding that Defendant infringed Plaintiff's copyright interest in
11 and to the Photographs by copying and displaying them without
12 a license or consent;
- 13 b. for an award of actual damages and disgorgement of all of
14 Defendant's profits attributable to the infringements as provided
15 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
16 alternative, at Plaintiff's election, an award for statutory damages
17 against Defendant for each infringement pursuant to 17 U.S.C. §
18 504(c), whichever is larger;
- 19 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant
20 from any infringing use of any of Plaintiff's works;
- 21 d. for costs of litigation and reasonable attorney's fees against
22 Defendant pursuant to 17 U.S.C. § 505
- 23 e. for pre-judgment interest as permitted by law; and
- 24 f. for any other relief the Court deems just and proper.
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1 DATED: September 20, 2024

2 **SANDERS LAW GROUP**

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4 By: /s/ Craig Sanders
5 Craig Sanders, Esq. (Cal Bar 284397)
6 333 Earle Ovington Blvd, Suite 402
7 Uniondale, NY 11553
8 Tel: (516) 203-7600
9 Email: csanders@sanderslaw.group
10 File No.: 129044

11 *Attorneys for Plaintiff*